IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 216 OF 2004.

S T A T E
Through Public Prosecutor,
High Court of Bombay at Panaji,
Panaji – Go.a Applicant/Appellant.

Versus

Rama Raglo Boryekar,
r/o Mavlantad, Sanquelim,
Attender, Syndicate Bank,
Sanquelim, Goa. .... Respondent/Original Accused.

Shri S.N. Sardessai, Public Prosecutor for the State/Applicant.

Shri S.A. Samant, Advocate for the Respondent/Accused.

CORAM: N. A. BRITTO, J.

DATE: 4th November, 2004.

ORAL ORDER:

The State seeks leave to appeal.

2. The respondent/accused has been tried and acquitted by the learned J.M.F.C., Bicholim in C.C. No.11/S/96 under Sections 468, 420, 467, 471 and 477-A of I.P.C.

3. Heard Shri. S.N. Sardessai, the learned P.P., on behalf of the State and Shri S. Samant, the learned Advocate of the respondent/accused.

4. From the facts stated on behalf of the prosecution, it appears that on 11.10.1990 a sum of Rs.5000/- was withdrawn by withdrawal slip bearing No.987846 from the Savings Account No.2684 of P.W.3 Ramchandra who himself came to know about the same on or about 24.8.92, as the account by him was not regularly operated, and he filed a complaint on 5.9.92 which was not brought on record of the case. A perusal of the judgment of acquittal of the learned Magistrate shows that the accused was one of the three attendants at the relevant time, and, in the payment of cash due on the said withdrawal slip, as many as five officials of the Bank were involved. Ranganath- P.W.4 was one of them being an official in charge of issuing of withdrawal slips, but he did not throw much light as to how the said withdrawal slip came to be issued on the day the same was issued. Mr. Teles was another official who was supposed to have compared the signature on the withdrawal slip with the specimen signature of the account holder with the Bank, but he was not examined in the case. The evidence shows that one Sequeira was the Bank Manager at the relevant time and he too was not examined, but who was examined was the Bank Manager who took charge in the year 1994 or thereabout. Although an inquiry was stated to have been conducted regarding the said withdrawal of Rs.5000/- from the account of the said P.W.3 Ramchandra Parsekar, one does not know what happened to the said inquiry and although P.W.3 Ramchandra Parsekar claimed that he had not withdrawn the said amount of Rs.5000/- by the said withdrawal slip from his account, the fact remained that the said amount of Rs.5000/- was ultimately paid to him and it was not known whether the said amount was paid to him under the authority of the Bank or at the

behest of any official of the Bank.

5. Although the said Ramchandra Parsekar filed his complaint on or about 5.9.92 about the said unauthorised withdrawal from his said account, the matter appears to have remained pending with the Bank until the filing of the complaint by the Bank Manager on 6.12.94. Neither the said Bank Manager or for that matter any of the Bank officials who were examined as prosecution witnesses nor the I.O. have tried to explain as to why the needle of suspicion was directed only against the accused who was one of the three attendants who was working for the Bank at the relevant time. The cashier who might have ultimately disbursed the cash due on the said withdrawal slip also was not examined. There is also no explanation as to why only the handwriting of the accused was taken and the case ultimately remained only on the opinion given by the handwriting expert namely P.W.6 Amar Singh who was a Government Examiner of questioned documents.

6. The learned J.M.F.C. in not accepting the evidence of P.W.6 Amar Singh has come to the conclusion that the evidence of the handwriting expert is not conclusive and as it is an opinion evidence, the same could not be the sole basis for conviction. At the time of hearing Shri Sardessai has placed reliance on the case of **Bhagwan aur v. Shri Maharaj Krishan Sharma and others (A.I.R. 1973 S.C. 1346)** wherein the Supreme Court has stated that the evidence of handwriting expert, unlike that of a fingerprint expert, is generally of a frail character and its fallibilities have been quite often noticed. The court should, therefore, be wary to give too much weight to the evidence of handwriting

expert. Conclusions based upon mere comparison of handwriting must at best be indecisive and yield to the positive evidence in the case.

7. On the other hand, Shri Samant, the learned Advocate for the accused has referred to the case of **State of Himachal Pradesh v. Jai Lal and others (A.I.R. 1999 S.C. 3318)** and has submitted that the evidence of P.W.6 Shri Amar Singh was only of an expert and an expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and materials furnished which form the basis of his conclusions. Shri Samant, learned Advocate has also placed reliance on the case of **Magan Bihari Lal v. The State of Punjab (A.I.R. 1977 S.C. 1091)** wherein the Supreme Court has stated that it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of

law. The Supreme Court concluded by stating that there can be no doubt that this type of evidence being opinion evidence, is by its very nature, weak and infirm and cannot of itself form the basis for a conviction.

8. In the case of **State of Maharashtra v. Sukhdeo Singh and another (A.I.R. 1992 S.C. 2100)** the Supreme Court had stated that before a Court can act on the opinion evidence of a handwriting expert two things must be proved beyond any manner of doubt, namely, (i) the genuineness of the specimen/admitted handwriting of the concerned accused and (ii) the handwriting expert is a competent, reliable and dependable witness whose evidence inspires confidence. The Supreme Court after considering the number of cases stated that the handwriting expert is a competent witness whose opinion evidence is recognized as relevant under the provisions of the Evidence Act and has not been equated to the class of evidence of an accomplice. It would, therefore, not be fair to approach the opinion evidence with suspicion but the correct approach would be to weigh the reasons on which it is based. The quality of his opinion would depend on the soundness of the reasons on which it is founded. But the court cannot afford to overlook the fact that the science of identification of handwriting is an imperfect and frail one as compared to the science of identification of finger-prints; courts have, therefore, been wary in placing implicit reliance on such opinion evidence and have looked for corroboration but that is not to say that it is a rule of prudence of general application regardless of the circumstances of the case and the quality of expert evidence. No hard and fast rule can be laid down in this behalf but the court has to decide in each case on its own merits what weight it should

attach to the opinion of the expert.

9. Needless to observe that the above appears to be the last word of the Supreme Court on the law on the subject of opinion of a handwriting expert and therefore the observations of the learned J.M.F.C. that such opinion cannot be sole basis for conviction is not correct. As far as this case is concerned, it appears that there were two more forgery cases at the relevant time but the accused was not concerned in the same and this was sufficient to raise a doubt regarding the complicity of this accused in the said withdrawal. Although the learned J.M.F.C. has not given any specific reasons for not accepting the evidence of P.W.6 Amar Singh it appears that the learned J.M.F.C. has found fault (i) with the genuineness of specimen handwritings of the accused as they were not signed nor sealed in presence of the panch witness P.W.2 Deshpande before whom they were allegedly taken; and (ii) two factors, amongst others, appear to have weighed in the mind of the learned J.M.F.C. namely that P.W.6 Amar Singh had not noted down the dissimilarities in the handwriting and his opinion was based only on similarities and he was also not in a position to opine whether the writings on the withdrawal slip (not signature in Devnagiri) (Q5A to Q5D) were of the accused or not.

10. There was no other evidence regarding the involvement of the accused. Although many of the reasons for acquittal given by the learned J.M.F.C. could be faulted with, her conclusion in giving benefit of doubt to the accused, in the totality of facts of the case, could not be faulted.

11. In view of the above, in my opinion, this is not a fit case to grant leave to appeal. The application, therefore, is hereby rejected.

N. A. BRITTO, J.

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